



Constitution Shouldn't Limit People's Rights

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The proposed Constitutional amendments prohibiting same-sex marriage would, for the first time, amend the Constitution to limit the rights of Americans rather than to enhance and protect their rights.

During the past two centuries, the founding principle that "all men are created equal" has been expanded to include women, as well as religious, racial and ethnic minorities. Each of these advances has been challenged as a threat to fundamental social institutions. Each time, those fears proved unfounded. The inclusion of each successive group has enhanced the greatness of our nation.

While the work to expand the promise of full civil rights to all is far from complete, lesbians and gays remain consigned to the legal fringes of our society. The federal government and many states still refuse to extend to lesbians and gays the most basic rights: the right to live free from discrimination in housing and employment, or the inclusion of crimes against lesbians and gays in hate crimes laws. Legislation, court rulings and state constitutional amendments explicitly targeting lesbian and gay rights are still commonplace.

The constitutional right to marry, long recognized and protected for every other class of consenting adults, is still denied to lesbians and gays. With that denial go thousands of rights at the federal, state and local level, such as keeping a law-abiding spouse in the country, visiting a loved one in the hospital, providing basic medical care for a partner, looking after a child, or inheriting property without disastrous tax consequences. Many life-partners of Sept. 11, 2001, victims were denied compensation provided to partners of other victims simply because they were not legally allowed to marry.

States or localities may offer some benefits to domestic partners in the form of employment benefits or "civil unions," but none of these measures provides all of the basic rights married couples take for granted. They also have no force in other states and do not provide any federal rights or responsibilities reserved to married couples, including things like Social Security disability benefits, immigration rights for binational couples, protection under the Family and Medical Leave Act, or joint taxation benefits.

Finally, marriage is different. People marry for many reasons beyond the practical economic and legal benefits. People marry because they want to enter into a life-long committed relationship with another person; it is an end unto itself. It is a bizarre and cruel irony that self-appointed "defenders of marriage" now demand that our Constitution permanently bar a significant segment of society from the benefits, responsibilities and joys of marriage.

Restrictions on the right to marry are also a threat to religious liberty. Allowing a couple to enter into a civil marriage or a marriage officiated by a clergyman of a faith that sanctifies such marriages poses no threat to those denominations whose beliefs would bar same-sex marriages. The Constitution would not permit, nor would anyone attempt to require, any religious community to recognize a marriage in violation of its religious beliefs. Denying the right to marry, however, does abridge religious freedom by giving the force of law to one particular religious view of marriage. The recent criminal charges brought against two ministers for performing same-sex marriages are a troubling consequence of current law.

Moreover, whatever one's views of the appropriateness of same-sex marriage, states' rights concerns cannot justify a constitutional amendment. Many opponents of same-sex marriage who do not support a constitutional amendment contend that the Defense of Marriage Act, enacted in 1996, and the "public policy" exception, long recognized by the Supreme Court, to the Constitution's Full Faith and Credit Clause, guarantee the legal authority of any state to refuse to recognize same-sex marriages from another state. Until and unless the Supreme Court declares DOMA unconstitutional, and the "public policy" exception inapplicable or unconstitutional, demands for a constitutional amendment are, at the least, premature.

Most of the proposed constitutional amendments go further than limiting the applicability of state-sanctioned marriages outside those states. Some strip state courts of the power to interpret their own states' constitutions, whether or not the citizens of that state agree, or block states from offering civil unions, or domestic partner benefits, instead of marriages - again, regardless of whether the people of those states agree. Rather than protecting states' rights, these proposals obliterate those rights.

Public opinion has steadily moved in the direction of favoring equal marriage rights. In the not-too-distant future, the arguments being advanced in favor of these constitutional amendments will be viewed as embarrassing historical curiosities. We should not take the radical step of distorting the greatest charter of individual liberty ever devised by adding a plainly discriminatory amendment. There is no need to consider an amendment now, and it would be wrong to do so.

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